

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 10377 of 2002

Between:

The Commissioner & Special Officer, M.C.H, Hyderabad,
Commercial Complex, Tank Bund Road, Hyderabad.

..... PETITIONER

AND

- 1 G. Satyanarayana S/o Late G. Narasimha
MCH Commercial Complex, Tank Bund Road,
Hyderabad.
- 2 The Secretary, Government of Andhra Pradesh, Municipal Administration and
Urban Development Department
Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of certiorari calling for the records pertaining to the order dt. 21.3.2002 passed in O.A.No.7961 of 2001 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad and quash the same and pass such further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.A.V.SESHA SAI

Counsel for the Respondent No.1: MR.WILLIAM BURRA

The Court made the following:

ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed by the Municipal Corporation, Hyderabad, challenging the order, dated 21.03.2002, passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No.7961 of 2001.

2. The 1st respondent was an attender in Municipal Corporation. He was appointed on 02.05.1973. However, he went on unauthorized absence from 01.06.1986 to 27.12.1986 and from 16.04.1989 to 01.12.1997. Thereafter, an enquiry was conducted and ultimately on 25.11.1997 he was imposed the punishment of deferment of 5 increments with cumulative effect and the period of absence was treated as *dies non*. But however, it appears that the matter was referred to the Government for certain clarifications, and basing on the clarification issued by the Government, the Municipal Corporation passed another order, dated 28.03.2001, forfeiting the past service of the 1st respondent from 02.05.1973 to 01.12.1997, and also appointing him afresh from 02.12.1997. Ultimately, the 1st respondent retired from service on 30.06.2004. The order, dated 28.03.2001, came to be challenged by the 1st respondent before the Tribunal.

3. The Tribunal after considering the matter, held that the order, dated 28.03.2001, passed by the Municipal Corporation is not sustainable, in view of the fact that the

1st respondent was already imposed the punishment on 25.11.1997.

4. Under those circumstances, the learned counsel for the Municipality submits that since the punishment was already imposed on 25.11.1997 treating the period of absence as *dies non*, the Government directed the Municipal Corporation to forfeit the past service of the 1st respondent and the authorities had implemented the directions of the Government. Thus, the order of the Tribunal is illegal and unsustainable.

5. We are afraid we cannot accept the contention raised by the learned counsel.

6. When once the order of punishment has become final, it cannot be interfered with unless it is reviewed. It is not a case of review in the instant case. The final order of punishment was passed on 25.11.1997 imposing the punishment of deferment of 5 increments with cumulative effect. In view of such punishment, no further punishment could be imposed either treating the appointment as fresh appointment or forfeiting the entire service. Thus, the order passed by the Tribunal cannot be said to be illegal.

7. However, we make it clear that from 02.05.1973 to 01.12.1997 and from 2.12.1997 to 30.06.2004 shall be treated as qualifying service for the purpose of pension and other retirement benefits and the pension should be fixed on *pro rata* basis.

8. Accordingly, the Writ Petition is disposed of. No costs.

G. BIKSHAPATHY, J

P.S. NARAYANA, J

Date: 25.04.2005

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To

- 1 The Commissioner & Special Officer, M.C.H, Hyderabad,
Commercial Complex, Tank Bund Road, Hyderabad.
- 2 The Secretary, Government of Andhra Pradesh, Municipal Administration and
Urban Development Department
Secretariat, Hyderabad.
- 3 2 CD copies